

03:55PM

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSEPH BONGIOVANNI,

Defendant.

Case No. 1:19-cr-227
(LJV)

March 21, 2024

TRANSCRIPT EXCERPT - TESTIMONY OF BRIAN A. BURNS
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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And

UNITED STATES DEPARTMENT OF JUSTICE
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And

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BY: PARKER ROY MacKAY, ESQ.

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For the Defendant

PRESENT:

MARILYN K. HALLIDAY, HSI Special Agent
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LAW CLERK:

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* * * * *

(Excerpt commenced at 3:55 p.m.)

(Jury present.)

THE COURT: The government can call its next witness.

MR. COOPER: Judge, the government calls Special
Agent Brian Burns.

B R I A N A. B U R N S, having been duly called and sworn,
testified as follows:

MR. COOPER: May I inquire, Judge?

THE COURT: You may.

DIRECT EXAMINATION BY MR. COOPER:

Q. Good afternoon, Special Agent Burns.

A. Good afternoon, Mr. Cooper.

Q. Would you please tell the jury a little bit about where
you grew up?

A. I grew up -- I was born in Buffalo, raised predominantly

03:56PM 1 in the Tonawanda area, and moved back to Buffalo and stayed
03:56PM 2 there until I left the area.

03:56PM 3 Q. Okay. How far did you go in school?

03:56PM 4 A. I got a masters.

03:56PM 5 Q. And what's your educational background like generally?

03:56PM 6 A. Yeah. I went to University of Buffalo, got a BS in

03:56PM 7 pharmacy. And then I got a masters in business

03:56PM 8 administration.

03:56PM 9 Q. After you graduated from pharmacy school, did you work as

03:56PM 10 a pharmacist?

03:56PM 11 A. Yes, I was a --

03:56PM 12 Q. How -- sorry, go ahead.

03:56PM 13 A. -- I was a licensed pharmacist for three years.

03:56PM 14 Q. How did you like working as a pharmacist?

03:57PM 15 A. It was nice. It wasn't overly interesting some days. A

03:57PM 16 little repetitive.

03:57PM 17 Q. Did you decide to try a different career?

03:57PM 18 A. Yes, I did.

03:57PM 19 Q. What did you do?

03:57PM 20 A. I joined the FBI.

03:57PM 21 Q. Was that more interesting?

03:57PM 22 A. Definitely interesting most days.

03:57PM 23 Q. Okay. Can you describe for the jury a little bit about

03:57PM 24 the training you received as a special agent with the FBI?

03:57PM 25 A. Sure. I entered the academy in October of 1998. I was

03:57PM 1 there for approximately four months. You learn
03:57PM 2 constitutional law, federal criminal law, you learn, kind of,
03:57PM 3 tactics so you can effectuate a search warrant, execute
03:57PM 4 search warrants, arrests safely, you learn firearms, you
03:57PM 5 learn interviews, interviews, interrogations, policies
03:57PM 6 procedures, tactical surveillance, tactical driving,
03:57PM 7 policy -- that covers just about most of it.

03:57PM 8 Q. And after you received that initial training, is that at
03:57PM 9 Quantico?

03:57PM 10 A. That's at Quantico, yes.

03:57PM 11 Q. Okay. And then were you transferred to a specific field
03:58PM 12 office?

03:58PM 13 A. Yes, I was assigned the Memphis, Tennessee office of the
03:58PM 14 FBI.

03:58PM 15 Q. And what years were you at the Memphis, Tennessee office?

03:58PM 16 A. '99 to 2008.

03:58PM 17 Q. What kinds of work did you do at the Memphis, Tennessee
03:58PM 18 office?

03:58PM 19 A. Initially, I did predominantly narcotics investigations.

03:58PM 20 Q. Did you handle a bunch of those?

03:58PM 21 A. Yes, quite a few.

03:58PM 22 Q. Okay. After handling a bunch of narcotics
03:58PM 23 investigations, did you transition into a different type of
03:58PM 24 work?

03:58PM 25 A. Yeah, I started doing more public corruption, kind of law

03:58PM 1 enforcement corruption. It aligned itself with the drug
03:58PM 2 aspect, so law enforcement corruption, narcotics nexus, and
03:58PM 3 then I eventually kind of segued to public officials and
03:58PM 4 elected officials, things like that.

03:58PM 5 Q. And in 2008, you described that as kind of the end of
03:58PM 6 your time in the Tennessee office. Where did you go after
03:58PM 7 that?

03:58PM 8 A. Yes, I was able to get back to the Western New York area,
03:58PM 9 and I was initially assigned to the Niagara Falls resident
03:58PM 10 agency. We had a small office there, and I was there for a
03:59PM 11 couple of years. And they shut that office down, and I was
03:59PM 12 transferred to Buffalo.

03:59PM 13 Q. What group did you work in at the Buffalo office?

03:59PM 14 A. White collar crime.

03:59PM 15 Q. And does that white collar crime group also cover public
03:59PM 16 corruption cases?

03:59PM 17 A. They do. That's the responsibilities of the white collar
03:59PM 18 crime squad.

03:59PM 19 Q. And has that been your focus since 2008?

03:59PM 20 A. Predominantly. I've had a couple civil rights and a few
03:59PM 21 fraud cases here and there.

03:59PM 22 **MR. COOPER:** Okay. Judge, I think the next topic
03:59PM 23 that I have to get into is something we just want to come up
03:59PM 24 on briefly.

03:59PM 25 **THE COURT:** Sure.

(Sidebar discussion held on the record.)

MR. COOPER: By way of background for the Court, there was some testimony from Shane Nastoff about an investigation that he conduct into an individual named Anthony Anastasia.

THE COURT: Yeah.

MR. COOPER: And then some comments that the defendant made to Nastoff about, I think, pardon my French, about getting shit for the Anthony Anastasia arrest.

Special Agent Burns and the FBI had a semi-contemporaneous investigation into Gables, Joe Mesi, that involved Anthony Anastasia.

So I outlined, I think, about three questions for counsel a week or two ago that I intended to cover with Special Agent Burns, and I gave them what I intended to ask and what I intended to elicit. And Mr. MacKay indicated he wanted to come up and address it, so now I'll turn it over to him.

MR. MacKAY: So there's three points. To lay the timeline out, my understanding is investigation by FBI is '09 into end of 2010, they execute some search warrants at the Gables bartender's house, Steve Brucato, Anthony Anastasia, and they interviewed Joe Mesi.

THE COURT: Okay.

MR. MacKAY: That's when they get Joe Mesi as a

confidential human source.

Now, fast forward to 2011, you recall Shane Nastoff testifying that's when Anthony Anastasia's arrested by the DEA.

THE COURT: That's when --

MR. MacKAY: That's when Anthony Anastasia's arrested by DEA.

THE COURT: Okay.

MR. MacKAY: And it arises based on a fast-moving tip on the Richard Himbury case. That's the one where Nastoff is tracking Himbury. Himbury gives off his -- somebody owes him money, and they kind of act that same day and arrest Anthony Anastasia.

The DEA doesn't charge Anthony Anastasia until several years later, I think it's '14 or '15. He pleads guilty and is sentenced.

I'm not -- one of the points is that Agent Burns, as an FBI agent, in this capacity is aware of the DEA arrest of Anthony Anastasia. I guess I don't really have an issue with that. But the 2009-2010 investigation of -- surrounding Gables, to me the objection is to relevance, I guess, because it doesn't -- I'm not sure how it connects to DEA activity.

THE COURT: So you're going to ask about the defendant saying that he had a hard time when Anthony Anastasia was arrested; is that the point?

04:02PM 1 **MR. COOPER:** Well, no, that came out through Nastoff.
04:02PM 2 What I intend to ask Special Agent Burns about is the
04:02PM 3 existence of this FBI investigation, and then the coordination
04:02PM 4 that occurred between FBI and DEA, which ultimately, it's the
04:02PM 5 government's position, leads to the defendant tipping off
04:02PM 6 Selva and then Serio to stay away from Gables and Anthony
04:02PM 7 Anastasia because there was an investigation going on there.
04:02PM 8 Serio testified about it.

04:02PM 9 **THE COURT:** Why isn't that -- why doesn't the fact
04:02PM 10 that there was an investigation in 2009 and 2010 to which the
04:02PM 11 defendant might have been privy leading to his knowledge, why
04:02PM 12 isn't that relevant regardless of when it was?

04:02PM 13 **MR. MacKAY:** So from everything I've reviewed, it's
04:02PM 14 not clear the DEA knows all about the '09, '10 investigation,
04:03PM 15 because that's an FBI Safe Streets Task Force. It's entirely
04:03PM 16 on that side, it doesn't involve the DEA.

04:03PM 17 DEA, they're sort of proceeding on one track, and
04:03PM 18 suddenly DEA comes in and sort of cuts that investigation off,
04:03PM 19 as far as I understand, by way of the sudden Richard Himbury
04:03PM 20 tip. So it's my understanding there's no, really,
04:03PM 21 knowledge --

04:03PM 22 **THE COURT:** There's no connection between the 2009
04:03PM 23 and 2010 investigation and what happened in --

04:03PM 24 **MR. MacKAY:** In 2011 a year later.

04:03PM 25 **MR. COOPER:** I think I can relay that foundation

1 without getting into the substance too much. And so if you
2 let me ask the witness about whether there was an FBI
3 investigation in 2009 that dovetailed and involved
4 coordination with DEA later into the same target, I expect the
5 answer is going to be yes. And so that will lay the
6 foundation of what they're objecting to.

7 **MR. MacKAY:** I'm not sure how it goes back to
8 Bongiovanni's knowledge. As I understand it, once DEA swoops
9 in, and everybody knows in DEA, then the FBI backs off and
10 says we can't go any further with this because now DEA took it
11 over and it's going to compromise --

12 **THE COURT:** That happens when?

13 **MR. MacKAY:** That happens in 2011 after --

14 **THE COURT:** Okay, so --

15 **MR. COOPER:** And, so, I think that the testimony
16 involved from Serio was that he was tipped off about Gables
17 and Mesi.

18 Mesi wasn't a part of the DEA investigation, he was
19 part of the FBI investigation. And if the defendant passed
20 that information, he had to have known about the FBI
21 investigation, that's why it's relevant. Essentially
22 corroborating what Selva said that Mesi was a source, or that
23 Mesi was someone you should stay away from.

24 I'm not getting deep into it.

25 **THE COURT:** I think he can establish that the FBI --

04:04PM 1 that the DEA and the FBI investigation were cross pollinated,
04:04PM 2 or the DEA took over the FBI investigation, which would have
04:04PM 3 given Bongiovanni the opportunity to find out about that.
04:04PM 4 That that's -- I think that's fair game.

04:04PM 5 **MR. MacKAY:** Right. And I just want to make a record
04:04PM 6 that as far as all the documents I've reviewed, I don't
04:04PM 7 believe that DEA was privy to who the confidential human
04:05PM 8 sources were on the FBI side of things. And then Serio's
04:05PM 9 testimony is --

04:05PM 10 **THE COURT:** Can't you cross-examine him?

04:05PM 11 **MR. MacKAY:** I guess I can, but I guess if that link
04:05PM 12 is never made, it becomes confusing to the jury of how do they
04:05PM 13 know.

04:05PM 14 **THE COURT:** But -- but -- but he's going to make
04:05PM 15 that --

04:05PM 16 **MR. COOPER:** I expect to make a link that there was
04:05PM 17 deconfliction and discussion between the two agencies, and I
04:05PM 18 think it's a very reasonable inference for the jury to draw
04:05PM 19 that the defendant somehow becomes aware of it because he tips
04:05PM 20 off Lou Selva. Stay away from Gables and Mesi.

04:05PM 21 **THE COURT:** And there is testimony that he tipped off
04:05PM 22 Lou Selva to stay away from Gables and Mesi.

04:05PM 23 **MR. MacKAY:** Two years -- at least two to four years
04:05PM 24 later.

04:05PM 25 **MR. COOPER:** But it came out of this FBI

1 investigation. DEA didn't have Mesi as a source.

2 **MR. TRIPI:** I would also add that Serio also
3 testified that he heard from -- I believe it was Masecchia,
4 but don't quote me on that, but Serio definitely testified he
5 said he learned that Gables and Mesi were under investigation.
6 So, this goes right to the people who were the core of the
7 conspiracy.

8 **THE COURT:** Yeah, I think that's fair game.

9 **MR. MacKAY:** I note my objection.

10 **THE COURT:** Yeah, you did. And you did a good job
11 arguing.

12 (End of sidebar discussion.)

13 **BY MR. COOPER:**

14 Q. Special Agent Burns, did you hear testimony from Lou
15 Selva during the course of this trial that he was tipped off
16 that Baby Joe Mesi and Gables Bar were the subject of an
17 ongoing investigation by federal law enforcement?

18 A. Yes.

19 Q. Did you hear testimony from Ron Serio that he was tipped
20 off that Baby Joe Mesi and Gables Bar were the subject of an
21 ongoing investigation by federal law enforcement?

22 A. Yes.

23 Q. Do you know who Baby Joe Mesi is?

24 A. Yes, I do.

25 Q. Who is he?

04:06PM 1 A. He was a professional boxer from the Western New York
04:06PM 2 area, and rose pretty high into the boxing ranks.

04:06PM 3 Q. Okay. And what's Gables?

04:06PM 4 A. It was a bar located on Hertel Avenue in proximity to
04:06PM 5 Crestwood and Colvin.

04:06PM 6 Q. Is Gables known to be frequented by any specific type of
04:06PM 7 group of people?

04:06PM 8 A. It's a North Buffalo bar. I mean, based on our
04:06PM 9 investigation, there was some Italian Organized Crime figures
04:06PM 10 that operated out of there.

04:07PM 11 Q. Was it known to be a bar that law enforcement frequented?

04:07PM 12 A. Some law enforcement.

04:07PM 13 Q. Did you hear Special Agent Nastoff testify that the
04:07PM 14 defendant at one point made a comment to him referencing that
04:07PM 15 Anastasia said Bongo had screwed him over?

04:07PM 16 A. Yes, I did.

04:07PM 17 Q. Special Agent Burns, in 2009, were you involved in an FBI
04:07PM 18 investigation into IOC and public corruption?

04:07PM 19 A. Yes, I was.

04:07PM 20 Q. Was Gables bar a part of that investigation?

04:07PM 21 A. Yes.

04:07PM 22 Q. Was it the focus of that investigation?

04:07PM 23 A. Gables, specifically there was -- the investigation
04:07PM 24 centered on two individuals that worked there, Anthony
04:07PM 25 Anastasia, Steven Brucato, that were distributing cocaine

1 from the bar, in proximity of the bar.

2 Additionally, there was a public corruption aspect
3 related to some law enforcement officers that frequented
4 there that appeared to be users of cocaine, and were possibly
5 providing information about law enforcement activities to
6 individuals that hung out there including, Anastasia and
7 Brucato.

8 Q. Was Tom Doctor one of those law enforcement officers that
9 came up as a subject of your investigation?

10 A. Yes, he was one of them.

11 Q. Did FBI ultimately arrest Anthony Anastasia related to
12 that investigation?

13 A. FBI did arrest him briefly. And then he ended up waiving
14 and agreeing to cooperate, but he did not.

15 Q. Okay. Did there come a time when you became aware of a
16 DEA investigation occurring semi-contemporaneously with that
17 FBI investigation?

18 A. Yeah, it's kind of shortly thereafter. Anastasia does
19 not continue cooperating, and he's distributing narcotics
20 again. And we ultimately end up -- well, the investigation
21 advances, Anastasia ultimately becomes the target of a DEA
22 investigation, and the two investigations kind of conclude
23 with a prosecution of Anastasia.

24 Q. Was there cross pollination, so to speak, between the FBI
25 investigation and the DEA investigation?

04:09PM 1 A. Eventually.

04:09PM 2 Q. Okay. And was there some deconfliction or meetings that
04:09PM 3 occurred between the FBI and the DEA about those
04:09PM 4 investigations?

04:09PM 5 A. There was, with the U.S. Attorney's Office on a decision
04:09PM 6 to prosecute -- just to clarify, I mean, the FBI one was
04:09PM 7 separate and apart initially. The DEA developed their own.
04:09PM 8 And then they kind of merged with a resolution of the
04:09PM 9 investigation.

04:09PM 10 Q. And so when you say they merged, was there a meeting that
04:09PM 11 discussed information that the FBI had developed, as well as
04:09PM 12 information that the DEA had developed?

04:09PM 13 A. There was, yeah, coordination with the U.S. Attorney's
04:10PM 14 Office on how to resolve the investigation.

04:10PM 15 Q. Okay. And did that ultimately conclude with the DEA
04:10PM 16 keeping the -- the -- I don't want to say stat, but keeping
04:10PM 17 the case?

04:10PM 18 A. And charging the -- finished the prosecution of the
04:10PM 19 Anastasia part of it.

04:10PM 20 Q. Okay. Was Mesi -- you mentioned Mesi before. Did Mesi
04:10PM 21 become a source during that FBI investigation?

04:10PM 22 A. Yes, that's what I was trying to -- I thought that's what
04:10PM 23 you were going with earlier, but, yes.

04:10PM 24 Mesi, as part of Brucato's cooperation, he was consuming
04:10PM 25 some narcotics, some cocaine at Brucato's house. And we

ended up basically detaining him, speaking with him, and he agreed to cooperate going forward. And that was kind of a focus that I particularly had related to the -- because of the public corruption aspect of it.

Q. Got it. I'd like to move on now. I want to speak with you about January of 2019. Were you working in the white collar unit of the FBI at that time?

A. Yes, I was.

Q. Okay. And did there come a time when you received a brief on the investigation into Joseph Bongiovanni?

A. In January of 2019.

Q. Okay. And who was at that brief? Like, what agencies participated in that?

A. HSI. Along with -- HSI, FBI, a senior management at my office. Some senior management from HSI. And high-ranking members of the U.S. Attorney's Office.

Q. And was that the first time you became aware of the investigation into Joseph Bongiovanni?

A. I had become aware of it just earlier either on that day or the -- or the day before. Because I had spoken with then U.S. Attorney J.P. Kennedy, and he had asked me about the FBI's involvement in this case.

MR. MacKAY: Objection, hearsay.

THE COURT: Sustained.

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BY MR. COOPER:

Q. Yeah, I'm not asking you about a conversation you had with J.P. Kennedy. But generally, it was January 2019 when you became aware of or involved with the Bongiovanni investigation?

A. Yes, January of 2019.

Q. Okay. Were you the lead case agent at that time?

A. Yes, I was.

Q. Okay. From the FBI?

A. From the FBI's part.

Q. Okay. And do you know Curtis Ryan?

A. Yes.

Q. Was he involved in the investigation at that time?

A. Yeah, he was at the meeting.

Q. By June of 2019, had you become increasingly more involved in the investigation?

A. Yes.

Q. Since 2019, have you and the FBI continued to work on the investigation?

A. Yes, we have.

Q. And would you describe that as a shared investigation with Homeland Security Investigations?

A. Yes, definitely.

Q. Are you familiar with the different witnesses involved in the case?

04:12PM 1 A. Intimately familiar.

04:12PM 2 Q. Are you familiar with the evidence in the case?

04:12PM 3 A. Intimately familiar with the evidence in this case.

04:12PM 4 Q. Were you present for the search warrant that was executed
04:12PM 5 at Joseph Bongiovanni's residence?

04:12PM 6 A. Yes.

04:12PM 7 Q. Okay. And just for the record, are you familiar with
04:12PM 8 what Joe Bongiovanni looks like?

04:12PM 9 A. Yes, I am.

04:12PM 10 Q. Is he in court?

04:12PM 11 A. Yes, he is.

04:12PM 12 Q. Can you point him out and identify an article of his
04:12PM 13 clothing?

04:12PM 14 A. With the defense counsel, wearing the red and blue
04:12PM 15 striped tie, in the center.

04:12PM 16 **MR. COOPER:** Judge, for the record, indicating the
04:13PM 17 defendant?

04:13PM 18 **THE COURT:** Yes.

04:13PM 19 **MR. COOPER:** Thank you.

04:13PM 20 I believe Exhibit 103-36 is already in evidence but I
04:13PM 21 just want to confirm with counsel before I ask to pull it up.
04:13PM 22 It's the --

04:13PM 23 Judge, I'd ask to pull up for everybody what I
04:13PM 24 believe is already in evidence, Government Exhibit 103-36.

04:13PM 25 **THE COURT:** Have you confirmed it's already in

04:13PM 1 evidence?

04:13PM 2 **MR. MacKAY:** It is, Judge.

04:13PM 3 **MR. SINGER:** This is the one that was subject to
04:13PM 4 connection, so that was satisfied.

04:13PM 5 **BY MR. COOPER:**

04:13PM 6 Q. Do you recognize this photograph?

04:13PM 7 A. Yes, I do.

04:13PM 8 Q. Do you recognize what's depicted in the photograph?

04:13PM 9 A. Yes.

04:13PM 10 Q. Is this a box that was in the defendant's residence?

04:13PM 11 A. Yes, in the basement on the day of the search warrant.
04:13PM 12 June 6th, 2019, at 85 Alder Place.

04:13PM 13 Q. Okay. And does this fairly and accurately depict the box
04:13PM 14 that was in the defendant's basement when his house was
04:14PM 15 searched in June of 2019?

04:14PM 16 A. Yes, it does.

04:14PM 17 **MR. COOPER:** Okay. You can take that down
04:14PM 18 Ms. Champoux, thank you.

04:14PM 19 **BY MR. COOPER:**

04:14PM 20 Q. Were you also present for a search warrant at Pharaoh's
04:14PM 21 Gentlemen's Club?

04:14PM 22 A. Yes, I was.

04:14PM 23 Q. And are you aware of whether DVRs or recording equipment
04:14PM 24 were recovered from Pharaoh's Gentlemen's Club?

04:14PM 25 A. Yes, I am.

04:14PM 1 Q. How many of them were recovered?

04:14PM 2 A. There were -- three DVRs were recovered, and each DVR

04:14PM 3 recorded from numerous cameras.

04:14PM 4 Q. Okay. And is it fair to say that this isn't a one-agent

04:14PM 5 case?

04:14PM 6 A. I'm sorry?

04:14PM 7 Q. Is this a one-agent case?

04:14PM 8 A. No. Absolutely not.

04:14PM 9 Q. Okay. This is a pretty large investigative team?

04:14PM 10 A. Yes.

04:14PM 11 Q. Are you aware of whether these DVRs were reviewed by the

04:14PM 12 investigative team?

04:14PM 13 A. Yes, they were.

04:14PM 14 Q. Okay. And are you aware of how long the DVRs stored

04:14PM 15 footage for?

04:14PM 16 A. Those three DVRs seized from there? Yes, I am.

04:14PM 17 Q. How long did they store footage for?

04:14PM 18 A. Two of the DVRs stored footage for approximately two

04:14PM 19 weeks. One of the DVRs stored footage for approximately

04:14PM 20 seven weeks.

04:15PM 21 Q. So if the DVR stored, at a maximum, seven weeks of

04:15PM 22 footage, would they have contained footage from 2013?

04:15PM 23 A. Would not.

04:15PM 24 Q. Would they have contained footage from 2014?

04:15PM 25 A. No.

04:15PM 1 Q. 2015?

04:15PM 2 A. No.

04:15PM 3 Q. 2016?

04:15PM 4 A. No.

04:15PM 5 Q. 2017?

04:15PM 6 A. No.

04:15PM 7 Q. 2018?

04:15PM 8 A. No.

04:15PM 9 Q. What year were they seized in?

04:15PM 10 A. They were seized on December 12, 2019.

04:15PM 11 Q. I'm not going to do math, we're gonna move on.

04:15PM 12 Are you aware of whether Peter Gerace's phone was seized

04:15PM 13 during a border crossing?

04:15PM 14 A. Yes, there was a seizure of a border crossing.

04:15PM 15 Q. Okay. Have you reviewed the extraction from his cell

04:15PM 16 phone?

04:15PM 17 A. Yes, I have.

04:15PM 18 Q. Have you reviewed a report containing some of the

04:15PM 19 contacts contained in Peter Gerace's cell phone?

04:15PM 20 A. Yes, I have.

04:15PM 21 Q. And did you compare that report to the cell phone

04:15PM 22 extraction itself?

04:15PM 23 A. Yes, I did.

04:15PM 24 **MR. COOPER:** Judge may I approach the witness?

04:16PM 25 **THE COURT:** You may.

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BY MR. COOPER:

Q. I'm going to show you what's been marked for
identification as Government Exhibit 310. Do you recognize
that?
A. Yes, I do.
Q. What do you recognize that to be?
A. That's an extraction of the Peter Gerace's telephone that
was seized -- I believe it was 4/27/2019 when he entered at
Newark.
Q. Okay. And have you reviewed the contents of that
extraction?
A. Yes, I have.
Q. How do you know that what's on that little white
rectangle is the extraction from Peter's cell phone?
A. From the initials on it, as well as my putting it into a
computer and viewing it.
Q. So you looked at what's on that disk yourself?
A. Yes, I have.
Q. And then you wrote your initials on it?
A. Yes, I did -- well, I did not initial on this one.
Q. Okay.
A. But I did review this earlier, well, many times
throughout the course of this investigation.
Q. I'm holding what's marked for identification now as
Government Exhibit 310A as in apples, T as in tomatoes.

04:17PM 1 **MR. COOPER:** May I approach the witness?

04:17PM 2 **THE COURT:** Sure.

04:17PM 3 **MR. COOPER:** Thank you.

04:17PM 4 **BY MR. COOPER:**

04:17PM 5 Q. Do you recognize Government Exhibit 310AT for
04:17PM 6 identification?

04:17PM 7 A. Yes, I do.

04:17PM 8 Q. What do you recognize that to be?

04:17PM 9 A. These are some selected contacts out of the image of the
04:17PM 10 Gerace telephone.

04:17PM 11 Q. Have you reviewed that before you sat in that chair
04:17PM 12 today?

04:17PM 13 A. Yes, numerous times.

04:17PM 14 Q. And does 310AT for identification fairly and accurately
04:17PM 15 depict some of the contacts contained in Peter Gerace's
04:17PM 16 iPhone from the 2019 extraction?

04:17PM 17 A. Yes, it does.

04:17PM 18 **MR. COOPER:** Judge, with that foundation I would
04:17PM 19 offer 310AT into evidence.

04:17PM 20 **MR. MacKAY:** No objection, Your Honor.

04:17PM 21 **THE COURT:** Received without objection.

04:17PM 22 **(GOV Exhibit 310AT was received in evidence.)**

04:17PM 23 **MR. COOPER:** May I approach the witness?

04:17PM 24 **THE COURT:** You may.

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1 **BY MR. COOPER:**

2 Q. Special Agent Burns, I'm going to ask you about a number

3 of different people now and whether they were contacts in

4 Peter Gerace's cell phone. And if you need to, you can

5 review what's already in evidence as 310AT. Okay?

6 A. Yep.

7 Q. Was Jeff Anzelone a contact in Peter Gerace's phone?

8 A. Yes, he was.

9 Q. How about Wayne Anderson?

10 A. Yes, he was.

11 Q. How about Joe Bella?

12 A. Yes, he was.

13 Q. How about Frank Burkhardt?

14 A. Yes, he was.

15 Q. Was there a contact called Jessica, Charm?

16 A. Yes, there is.

17 Q. Do you know an individual in this investigation who goes

18 by the alias Charm?

19 A. Yes, Jessica Leyland. That's her dancer name, Charm.

20 Q. Was there a contact in Gerace's phone with the name Dan

21 Derenda?

22 A. Yes, there is.

23 Q. Who's that?

24 A. Dan Derenda was the former Buffalo Police Commissioner

25 for the City of Buffalo, and then he's a close associate of

04:18PM 1 Peter Gerace.

04:18PM 2 Q. And are you aware of whether Dan Derenda wrote a letter

04:18PM 3 on behalf of Peter Gerace for his prior felony conviction?

04:18PM 4 A. Yes, I've reviewed that letter.

04:18PM 5 Q. Is there an entry in Peter Gerace's contact section with

04:19PM 6 the name Paulie, Hot Dog?

04:19PM 7 A. Yes, there is.

04:19PM 8 Q. Who is that?

04:19PM 9 A. Paul Francoforte. He goes by the name Hot Dog.

04:19PM 10 Q. Is there an entry with the name Marcus?

04:19PM 11 A. Yes, there is.

04:19PM 12 Q. Has that name come up during the course of the Pharaoh's

04:19PM 13 and Peter Gerace investigation?

04:19PM 14 A. Numerous times.

04:19PM 15 Q. And what's Marcus's full name?

04:19PM 16 A. His true name is Marcus Hatten, but he goes by Marcus

04:19PM 17 Black, or Black. Two aliases.

04:19PM 18 Q. Is there an entry for Michael Masecchia?

04:19PM 19 A. Yes.

04:19PM 20 Q. Heard that name before?

04:19PM 21 A. Many times.

04:19PM 22 Q. Is there an entry for Joseph or Joe Palmieri?

04:19PM 23 A. Yes, I have.

04:19PM 24 Q. Who is Joe Palmieri?

04:19PM 25 A. He's a now currently retired Town of Tonawanda Police

04:19PM 1 Department officer who was a partner, or in the same group
04:19PM 2 with Joseph Bongiovanni at the DEA.

04:19PM 3 Q. Is there an entry for an individual named Derek Roy?
04:19PM 4 A. Yes, there is.

04:19PM 5 Q. Who's that person?
04:19PM 6 A. He was a -- now retired Buffalo Sabres player.

04:19PM 7 Q. How about is there a Matt Barnaby?
04:19PM 8 A. Yes, there is.

04:19PM 9 Q. Who is that person?
04:19PM 10 A. He is also a now retired professional hockey player that
04:20PM 11 played for the Buffalo Sabres for a number of years.

04:20PM 12 Q. Is there an individual named K.L.?
04:20PM 13 A. Yes, there was.

04:20PM 14 Q. How about an individual named Lindsay Schuh?
04:20PM 15 A. Yes, there is.

04:20PM 16 Q. How about Tom Napoli?
04:20PM 17 A. Yes, there is.

04:20PM 18 Q. How about Tom Doctor?
04:20PM 19 A. Yes. It's under Doctor, but it's Tom Doctor's telephone
04:20PM 20 number.

04:20PM 21 Q. Is there an individual named Greg Trotter?
04:20PM 22 A. Yes, there is.

04:20PM 23 Q. Who's Greg Trotter?
04:20PM 24 A. Greg Trotter is a detective -- detective sergeant or
04:20PM 25 detective with the Amherst Police Department.

04:20PM 1 Q. Did you hear Katrina Nigro testify on Tuesday that Greg
04:20PM 2 Trotter was a corrupt law enforcement officer?

04:20PM 3 A. Yes, I did.

04:20PM 4 Q. Are you aware of whether Greg Trotter is actually a law
04:20PM 5 enforcement officer?

04:20PM 6 A. He's with the -- a detective with the Amherst Police
04:20PM 7 Department.

04:20PM 8 Q. Is he currently charged with making false --

04:20PM 9 **MR. MacKAY:** Objection. Objection, Your Honor,
04:20PM 10 relevance.

04:20PM 11 **MR. COOPER:** I can come up and explain it.

04:20PM 12 **THE COURT:** Okay.

04:21PM 13 (Sidebar discussion held on the record.)

04:21PM 14 **MR. COOPER:** Judge, the -- I think we've come up
04:21PM 15 several times on this same topic with respect to explaining
04:21PM 16 why certain individuals are not being called as government
04:21PM 17 witnesses. He's unavailable to us, he's charged.

04:21PM 18 **MR. MacKAY:** A couple things. Number one, Judge,
04:21PM 19 it's an allegation. Number 2, it's essentially bolstering
04:21PM 20 Ms. Nigro's testimony.

04:21PM 21 **THE COURT:** Yeah, and if -- you're gonna argue that
04:21PM 22 this guy shouldn't be called as a witness --

04:21PM 23 **MR. MacKAY:** No, not Trotter.

04:21PM 24 **MR. COOPER:** Okay, sorry. I felt on notice with the
04:21PM 25 missing witness comments, and so --

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1 **THE COURT:** I understand.

2 **MR. COOPER:** -- but I'll move on from that. I'll

3 withdraw the question.

4 **THE COURT:** Fine. Okay. Great.

5 (End of sidebar discussion.)

6 **MR. COOPER:** Judge, I'll withdraw that question and

7 move on.

8 **BY MR. COOPER:**

9 Q. Was there a contact under the name Tommy O?

10 A. Yes.

11 Q. Is that an alias for an individual you're familiar with?

12 A. Yes, very familiar. It's John Ermin, he's the general

13 manager of Pharaoh's, and he was present and I interviewed on

14 the day of the search warrant at Pharaoh's Gentlemen's Club

15 on December 12, 2019.

16 Q. Was there an entry for an individual name Frank Tripi?

17 A. Yes, there was.

18 Q. Was there an entry for an individual named Joe Tomasello?

19 A. Yes, there was.

20 Q. Was there an entry for an individual named Phlycia Ray?

21 A. Yes, there was.

22 Q. Do you know Phlycia Ray to be the maiden name for another

23 individual?

24 A. Yes.

25 Q. Okay. What's the other individual -- or, what's that

04:22PM 1 individual's current name?

04:22PM 2 A. Phlycia Hunt.

04:22PM 3 Q. Phlycia Hunt?

04:22PM 4 A. Yes, her maiden name was Phlycia Ray.

04:22PM 5 Q. Was there a contact stored as Anthony, bro, B-R-O?

04:22PM 6 A. Yes.

04:22PM 7 Q. Do you know Peter Gerace to have a bro named Anthony?

04:22PM 8 A. Yes, Anthony Gerace was his brother.

04:22PM 9 Q. Is the defendant's work cell phone number 716-818-0966?

04:23PM 10 A. Stored as a contact?

04:23PM 11 Q. I'm just asking if that's his work cell phone number.

04:23PM 12 A. That is his work cell.

04:23PM 13 Q. Or, was.

04:23PM 14 A. Yes, was, that's was the one he turned in.

04:23PM 15 Q. Was that stored in Peter Gerace's phone as a contact?

04:23PM 16 A. It was not stored as a contact.

04:23PM 17 Q. Are you aware that the defendant's post-retirement phone

04:23PM 18 number was 716-507-2784?

04:23PM 19 A. Yes, I'm aware.

04:23PM 20 Q. Was that stored in Gerace's 2019 phone extraction as a

04:23PM 21 contact?

04:23PM 22 A. That was not stored as a contact.

04:23PM 23 Q. Special Agent Burns, have you reviewed the Ron Serio

04:23PM 24 contacts report which is already in evidence as Government

04:23PM 25 Exhibit 46?

04:23PM 1 A. Yes, I have.

04:23PM 2 Q. Have you reviewed Bongiovanni's contacts report contained

04:23PM 3 in Government Exhibit 109F?

04:23PM 4 A. Yes, I have.

04:23PM 5 Q. Have you reviewed -- and let me ask a clarifying question

04:23PM 6 first. In 109F, is that the contacts report from

04:23PM 7 Bongiovanni's post-retirement phone?

04:23PM 8 A. Yes, the post-retirement phone.

04:24PM 9 Q. Okay. And the preretirement phone was the DEA phone,

04:24PM 10 right?

04:24PM 11 A. That was the one that was wiped.

04:24PM 12 Q. Okay. Have you reviewed Selva's contacts report

04:24PM 13 contained in Government Exhibit 208D?

04:24PM 14 A. Yes, I have.

04:24PM 15 Q. And we just discussed that you reviewed Gerace's contacts

04:24PM 16 which is in Government Exhibit 310AT, right?

04:24PM 17 A. Correct.

04:24PM 18 Q. Have you reviewed Bella's contacts contained in

04:24PM 19 Government Exhibit 312-E?

04:24PM 20 A. Yes, I have.

04:24PM 21 Q. I'm going hand you what's marked for identification as

04:24PM 22 Government Exhibit 367.

04:24PM 23 **MR. COOPER:** Judge, can I approach?

04:24PM 24 **THE COURT:** Sure.

04:24PM 25 **MR. COOPER:** Thank you.

04:24PM

1

BY MR. COOPER:

04:24PM

2

Q. Take a moment and look at that, and I'll be right back.

04:24PM

3

A. Certainly.

04:24PM

4

Q. Do you recognize that document?

04:24PM

5

A. Yes, I do.

04:24PM

6

Q. What do you recognize that to be?

04:24PM

7

A. It's a chart that was created utilizing the contacts from

04:24PM

8

the individuals you just mentioned, Ron Serio, Bongiovanni,

04:25PM

9

Selva, Gerace, and Bella.

04:25PM

10

And then on the left-hand side of the chart is various

04:25PM

11

names of individuals whose -- are relevant to this

04:25PM

12

investigation, there's names that come up in the course of

04:25PM

13

this trial.

04:25PM

14

Q. And does that chart fairly and accurately depict some of

04:25PM

15

the overlapping contacts that were found in the different

04:25PM

16

contacts sections that we just discussed?

04:25PM

17

A. Yes, it does.

04:25PM

18

MR. COOPER: Judge, I would offer Government

04:25PM

19

Exhibit 367 into evidence.

04:25PM

20

MR. MacKAY: No objection, Your Honor.

04:25PM

21

THE COURT: Received without objection.

04:25PM

22

(GOV Exhibit 367 was received in evidence.)

04:25PM

23

MR. COOPER: Can we publish Government Exhibit 367

04:25PM

24

for everybody, please?

25

04:25PM

1

BY MR. COOPER:

04:25PM

2

Q. All right. So Special Agent Burns, on the left side of

04:25PM

3

this document where we have all these names, are these the

04:25PM

4

individuals whose names show up as stored contacts in the

04:25PM

5

phones listed on the top?

04:25PM

6

A. That's correct.

04:25PM

7

Q. Okay. Do you see that name Paul Francoforte that we

04:26PM

8

spoke about earlier?

04:26PM

9

A. Yes, I do.

04:26PM

10

Q. Is that also known as Hot Dog?

04:26PM

11

A. That's Hot Dog.

04:26PM

12

Q. And who is -- is Hot Dog in Ron Serio's phone?

04:26PM

13

A. Hot Dog is in, yes, Ron Serio's phone.

04:26PM

14

Q. Is he in the defendant's phone?

04:26PM

15

A. Bongiovanni, yes, that's.

04:26PM

16

Q. Is he in Peter Gerace's phone?

04:26PM

17

A. Yes, he is.

04:26PM

18

Q. How about -- let's go down to Frank Parisi. Do you see

04:26PM

19

that line?

04:26PM

20

A. Parisi? Yes, I do.

04:26PM

21

MR. COOPER: Can we highlight that one, Ms. Champoux?

04:26PM

22

Thank you, ma'am.

04:26PM

23

BY MR. COOPER:

04:26PM

24

Q. Is he in Ron Serio's phone?

04:26PM

25

A. Yes, he's in all of them.

04:26PM 1 Q. He's in all of them?

04:26PM 2 A. Yes, he is.

04:26PM 3 Q. Okay. And all of them would be Serio, Bongiovanni,

04:26PM 4 Selva, Gerace, and Bella; is that correct?

04:26PM 5 A. That's correct.

04:26PM 6 Q. How about Lou Selva, is his name down there on the left?

04:27PM 7 A. I see it.

04:27PM 8 Q. Is he in the Serio phone?

04:27PM 9 A. Yes.

04:27PM 10 Q. Is he in the defendant's phone?

04:27PM 11 A. Yes.

04:27PM 12 **MR. COOPER:** You can take that down, Ms. Champoux,

04:27PM 13 thank you.

04:27PM 14 **BY MR. COOPER:**

04:27PM 15 Q. Are you familiar with the name Frank Tripi?

04:27PM 16 A. Yes, I am.

04:27PM 17 Q. Okay. Are you familiar with Frank Tripi's phone number?

04:27PM 18 A. Yes, I am.

04:27PM 19 Q. Special Agent Burns, did you see Frank Tripi stored as a

04:27PM 20 contact in Ron Serio's phone extraction?

04:27PM 21 A. Yes.

04:27PM 22 Q. Was the phone number associated with Frank Tripi

04:27PM 23 716-429-6445?

04:27PM 24 A. Yes, it is.

04:27PM 25 Q. Okay. And did you review Government Exhibit 358,

04:27PM 1 Defendant Bongiovanni's phone records, for his work cell
04:27PM 2 phone ending in 0966?
04:27PM 3 A. Yes, the toll records, not the extraction. The actual --
04:27PM 4 Q. Okay. And to be clear, the extraction had nothing on it,
04:27PM 5 right?
04:27PM 6 A. Right, because the phone was wiped. But I just wanted to
04:28PM 7 clarify, it was the toll records, unlike this exhibit which
04:28PM 8 is extractions, it was cell phone records.
04:28PM 9 Q. Okay. And when you say phone records, you mean records
04:28PM 10 that show incoming and outgoing calls?
04:28PM 11 A. That's correct.
04:28PM 12 Q. Calls that a person receives, right?
04:28PM 13 A. And sends.
04:28PM 14 Q. And calls --
04:28PM 15 A. Made, I should say send.
04:28PM 16 Q. Did you check Government Exhibit 358, the call records
04:28PM 17 for the defendant's work cell phone, to see if he had any
04:28PM 18 phone contact with Frank Tripi at the phone number ending in
04:28PM 19 6445?
04:28PM 20 A. Yes, I did.
04:28PM 21 Q. Did they have any phone contact?
04:28PM 22 A. In October of 2018, they had phone contact.
04:28PM 23 Q. Okay. Did they have one phone call, or multiple phone
04:28PM 24 calls?
04:28PM 25 A. It was three phone calls.

04:28PM 1 Q. Okay. And about how long was the longest call, if you
04:28PM 2 remember?

04:28PM 3 A. Approximately six minutes.

04:28PM 4 Q. Special Agent Burns, are you aware of whether Peter
04:28PM 5 Gerace has a prior felony conviction?

04:28PM 6 A. Yes, I am familiar.

04:28PM 7 Q. And did that occur on or -- or, did the conviction occur
04:28PM 8 on or around 2006?

04:29PM 9 A. Approximately.

04:29PM 10 Q. Was Gerace a convicted felon before the 2011 trip to Las
04:29PM 11 Vegas that he went on?

04:29PM 12 A. Absolutely.

04:29PM 13 Q. Special Agent Burns, were you present in the courtroom
04:29PM 14 when Katrina Nigro testified that Lillo Brancato would go
04:29PM 15 upstairs with dancers at Pharaoh's Gentlemen's Club?

04:29PM 16 A. Yes, I was.

04:29PM 17 Q. Do you know who Lillo Brancato is?

04:29PM 18 A. I do.

04:29PM 19 Q. Who is he?

04:29PM 20 A. He's an actor out of New York City -- or, I'm sorry,
04:29PM 21 residing down in New York City, and he acted in the Bronx
04:29PM 22 Tale?

04:29PM 23 Q. Have you ever seen A Bronx Tale?

04:29PM 24 A. I have not, Mr. Cooper.

04:29PM 25 Q. Have you -- have you familiarized yourself what Lillo

04:29PM 1 Brancato looks like?

04:29PM 2 A. Yes, I have.

04:29PM 3 Q. And I'd like to bring up for the jury Government

04:29PM 4 Exhibit 310D already in evidence. And Government

04:29PM 5 Exhibit 310D text messages between Peter Gerace and the

04:30PM 6 defendant?

04:30PM 7 A. Yes, they are.

04:30PM 8 **MR. COOPER:** Ms. Champoux, can we pull up page 75.

04:30PM 9 And can you zoom in on the photo there? Just get the people

04:30PM 10 at the table, do you want have to get the whole thing. Thank

04:30PM 11 you, ma'am.

04:30PM 12 **BY MR. COOPER:**

04:30PM 13 Q. Is Peter Gerace in that picture?

04:30PM 14 A. Yes, he is.

04:30PM 15 Q. Can you circle his head? Is Lillo Brancato in that

04:30PM 16 picture?

04:30PM 17 A. He is.

04:30PM 18 Q. Is there anybody else in that picture that you recognize?

04:30PM 19 A. I do.

04:30PM 20 Q. Okay. Who do you recognize?

04:30PM 21 A. Fred Roach, he's a boxing trainer.

04:30PM 22 Q. As far as you know, is he a celebrity?

04:30PM 23 A. If you consider a very prominent boxing -- I mean, he

04:30PM 24 coached heavyweight champions. So, yes, I would say he's a

04:30PM 25 celebrity.

04:30PM 1 Q. Okay.

04:30PM 2 A. Depends on your definition of celebrity, Mr. Cooper, I
04:30PM 3 guess.

04:30PM 4 **MR. COOPER:** Ms. Champoux, can you unzoom from that
04:30PM 5 and go to page 21. There you go. Perfect. Thank you.

04:30PM 6 **BY MR. COOPER:**

04:31PM 7 Q. Do you recognize the individuals in this photo?

04:31PM 8 A. Yes, I do.

04:31PM 9 Q. Who's on the left?

04:31PM 10 A. Lillo Brancato.

04:31PM 11 Q. Who's on the right?

04:31PM 12 A. Peter Gerace.

04:31PM 13 Q. Do you recognize the background of that photograph?

04:31PM 14 A. It appears to be Pharaoh's.

04:31PM 15 **MR. COOPER:** You can take that down, Ms. Champoux.

04:31PM 16 Thank you, ma'am.

04:31PM 17 **BY MR. COOPER:**

04:31PM 18 Q. I want to talk to you a little bit more about Hot Dog,
04:31PM 19 okay?

04:31PM 20 A. Certainly.

04:31PM 21 Q. In the law enforcement community, is he believed be an
04:31PM 22 associate of Italian Organized Crime?

04:31PM 23 A. Yes, he is.

04:31PM 24 **MR. COOPER:** Ms. Champoux, can you on the left side
04:31PM 25 of the screen please pull up Government Exhibit 8A. Thank

1 you. And move forward to -- move forward to page 347. This
2 is already in evidence.

3 And on the right side of the screen, can you pull up
4 Government Exhibit 26-D, and can you go to page 4 of that
5 document.

6 **BY MR. COOPER:**

7 Q. Special Agent Burns, have you reviewed both of these
8 documents?

9 A. Yes, I have.

10 Q. On the left side of the screen, is this a subpoena for
11 subscriber information from the defendant's case file
12 C2-13-0026?

13 A. Yes, I observed that within that file.

14 Q. Okay. And who is the subscriber that's being searched in
15 C2-13-0026?

16 A. Paul Francoforte, a/k/a Hot Dog.

17 Q. Okay. On the right side of the screen, is this a DARTS
18 notification from February of 2019 which would have provided
19 notification to the defendant of Special Agent Casullo's
20 DARTS entry of Paul Francoforte's phone number had the
21 defendant not already retired?

22 A. Yes, if he had not retired, it would have notified him.

23 **MR. COOPER:** Okay. Ms. Champoux, you can take those
24 two down, please. And now on the left side of the screen if
25 you will pull up Government Exhibit 393. And on the right

side of the screen, if you can pull up Government Exhibit 3713A, which is in evidence.

BY MR. COOPER:

Q. Okay. On the left side screen, Special Agent Burns, can you circle Hot Dog for the jury?

And can you circle the reputed former Boss of Italian Organized Crime in Buffalo?

MR. COOPER: And, Ms. Champoux, can we zoom in on the names of the two individuals that were traveling together on the right side of the screen?

BY MR. COOPER:

Q. Who are the two individuals that traveled together in 2012 in Government Exhibit 3713A?

A. Paul Francoforte a/k/a Hot Dog and Joseph Bongiovanni.

MR. COOPER: All right. You can take those down, Ms. Champoux.

BY MR. COOPER:

Q. Special Agent Burns, are you familiar with DEA case number C2-13-0026?

A. Yes, extremely familiar.

Q. Have you reviewed the official file?

A. The official file of both the paper portion of it and the digital portion, I have.

Q. Okay. And have you reviewed the working file that the defendant brought home and had in his basement?

04:34PM 1 A. Yes, I have.

04:34PM 2 Q. I'd like to direct your attention to Government

04:34PM 3 Exhibit 8M in evidence.

04:34PM 4 **MR. COOPER:** Can we pull that up?

04:34PM 5 **BY MR. COOPER:**

04:34PM 6 Q. Have you reviewed this document?

04:34PM 7 A. Yes, I have.

04:34PM 8 Q. Is it your understanding that this is a DEA-6 summary

04:34PM 9 report?

04:34PM 10 A. That's what it is.

04:34PM 11 Q. Okay. And is this the first -- essentially the first

04:34PM 12 DEA-6 filed in case number C2-13-0026?

04:34PM 13 A. Yes, it is.

04:34PM 14 **MR. COOPER:** Ms. Champoux, I'm sorry, to do this.

04:35PM 15 Can we take this down. And on the left side of the screen,

04:35PM 16 can you pull up Government Exhibit 8A-6 which is a submarked

04:35PM 17 exhibit of page 3 from Government Exhibit 8A. Can we put that

04:35PM 18 on the left? And then I'm going to have you bring up 8M on

04:35PM 19 the right.

04:35PM 20 **BY MR. COOPER:**

04:35PM 21 Q. Special Agent Burns, if you need, we'll zoom in, just let

04:35PM 22 me know. What was the date of Government Exhibit 8M? What

04:35PM 23 date was it prepared?

04:35PM 24 A. 11/28/2012.

04:35PM 25 Q. Are you able to see it okay?

04:35PM 1 A. Yes, I don't need this.

04:35PM 2 Q. Okay. Does the summary report mention Ron Serio at all?

04:35PM 3 A. It does not.

04:35PM 4 Q. Does it mention the Serio DTO at all?

04:35PM 5 A. It does not reference the Serio drug-trafficking
04:35PM 6 organization.

04:35PM 7 Q. Okay. Now you mentioned that you reviewed the entire
04:35PM 8 file of C2-13-0026, as well as the working file from the
04:36PM 9 defendant's basement. Is there any explanation at all in any
04:36PM 10 of the materials that you reviewed indicating a factual basis
04:36PM 11 in the file linking Ron Serio to Wayne Anderson's arrest?

04:36PM 12 A. Nothing in the file.

04:36PM 13 Q. Can you please draw a line through the -- on the left
04:36PM 14 side of the screen, on 8A-6, through the indication for a
04:36PM 15 summary report from November 28, 2012?

04:36PM 16 A. I'm sorry?

04:36PM 17 Q. Can you please draw a line through the summary report
04:36PM 18 that we're looking at on the right. Just mark that one off.
04:36PM 19 Thank you. Okay.

04:36PM 20 Is it your understanding that Anderson was caught by the
04:36PM 21 New York State Police receiving hundreds of pounds of
04:36PM 22 marijuana?

04:36PM 23 A. It was approximately 269 pounds of marijuana.

04:36PM 24 Q. Okay. And is it your understanding that currency was
04:36PM 25 seized?

04:36PM 1 A. Yes, approximately -- or not approximately, \$27,000 worth
04:37PM 2 of currency was seized.

04:37PM 3 Q. Have you reviewed Wayne Anderson's criminal history?

04:37PM 4 A. Yes, I have.

04:37PM 5 Q. Was he ever convicted of any criminal offense related to
04:37PM 6 the 2012 marijuana arrest?

04:37PM 7 A. I reviewed the criminal history. There's a notation of
04:37PM 8 an arrest, and there was no indication of any conviction or
04:37PM 9 any resolution to that case.

04:37PM 10 Q. Okay.

04:37PM 11 **MR. COOPER:** Ms. Champoux, can we leave up 8A-6 on
04:37PM 12 the left, and just take down 8M on the right.

04:37PM 13 That's okay. Can we bring up 8A-6 on the left again?
04:37PM 14 And then on the right, bring up 8A and go to page 72.

04:37PM 15 **BY MR. COOPER:**

04:37PM 16 Q. Special Agent Burns do you recognize what this is on the
04:37PM 17 right side of the screen, page 72 of Exhibit 8A?

04:37PM 18 **MR. MacKAY:** Judge, I'm going to object at this point
04:37PM 19 on cumulative grounds. If we're going to go through most of
04:37PM 20 these documents again that we did at the beginning of the case
04:37PM 21 when we covered the actual witnesses who dealt with them.

04:38PM 22 **MR. COOPER:** Judge, I haven't even asked a question
04:38PM 23 about the document yet, so I don't know how counsel can
04:38PM 24 predict whether it's cumulative or not.

04:38PM 25 **THE COURT:** Okay. Next question. Overruled, next

04:38PM 1 question.

04:38PM 2 **BY MR. COOPER:**

04:38PM 3 Q. Did the defendant report that Anderson pled guilty in
04:38PM 4 New York State Court?

04:38PM 5 A. In this document, which was located --

04:38PM 6 **MR. MacKAY:** Objection, Judge. Now I'm raising the
04:38PM 7 objection again that we've dealt with it before.

04:38PM 8 **MR. COOPER:** Judge, I'm developing the witness while
04:38PM 9 I worked through the case file, and so I can come up and
04:38PM 10 proffer about how this is going to differ from --

04:38PM 11 **THE COURT:** No, overruled.

04:38PM 12 **BY MR. COOPER:**

04:38PM 13 Q. Did the defendant report that Wayne Anderson was
04:38PM 14 convicted?

04:38PM 15 A. Yes, in this document located in that file, I located
04:38PM 16 this document, and it stated that on January 4th, 2015,
04:38PM 17 Anderson pled in New York State Court and sentenced to
04:38PM 18 36 months probation.

04:38PM 19 **MR. COOPER:** Ms. Champoux, can you zoom in on
04:38PM 20 paragraph 23 at the bottom of the right -- the document on the
04:38PM 21 right? Yep.

04:38PM 22 **BY MR. COOPER:**

04:39PM 23 Q. Is that what you're talking about?

04:39PM 24 A. It's easier to read now.

04:39PM 25 Q. I should have done that first, I'm sorry. Is that

04:39PM 1 consistent with Wayne Anderson's criminal history?

04:39PM 2 A. That is not consistent with his criminal history.

04:39PM 3 **MR. COOPER:** Okay. Can you zoom out of that,

04:39PM 4 Ms. Champoux? And now on the right, can we go to page 19?

04:39PM 5 **BY MR. COOPER:**

04:39PM 6 Q. Is this a DEA-6 summary report for acquisition of U.S.

04:39PM 7 currency seized from Wayne Anderson?

04:39PM 8 A. Yes.

04:39PM 9 Q. What's the date that this report was prepared?

04:39PM 10 A. Prepared on January 17th, 2013.

04:39PM 11 Q. Does it mention Ron Serio at all?

04:39PM 12 A. It does not mention Ron Serio.

04:39PM 13 Q. Did the defendant author this document?

04:39PM 14 A. No, this was authored by Clint Calloway, or TFO Clint
04:39PM 15 Calloway.

04:39PM 16 Q. Is this document authored on January 17th, 2013,

04:39PM 17 documented on the case status checklist on the left side of
04:39PM 18 your screen?

04:39PM 19 A. Yes, it is.

04:39PM 20 Q. Can you cross it off?

04:39PM 21 A. Certainly.

04:39PM 22 **MR. COOPER:** Ms. Champoux, can we keep 8A-6 up on the
04:40PM 23 left, and on the right pull up Exhibit 8K.

04:40PM 24 **BY MR. COOPER:**

04:40PM 25 Q. Do you recognize Exhibit 8K?

04:40PM 1 A. Yes, I do.

04:40PM 2 Q. Is this a DEA-6 report of an investigation?

04:40PM 3 A. Yes, it's a DEA-6.

04:40PM 4 Q. What was the date that this DEA-6 was submitted?

04:40PM 5 A. The day prepared is 2/7 of 2013.

04:40PM 6 Q. Okay. Were you present for the testimony of New York

04:40PM 7 State Police Investigator O'Rourke?

04:40PM 8 A. Yes, I was.

04:40PM 9 Q. Did he testify that he was trying to set up a proffer
04:40PM 10 interview with Wayne Anderson?

04:40PM 11 A. He did not.

04:40PM 12 Q. Did O'Rourke testify about whether the defendant ever

04:40PM 13 called him to discuss a proffer interview with Anderson?

04:40PM 14 A. Not to discuss a proffer.

04:40PM 15 Q. Can you cross off the February 7, 2013 case status report

04:40PM 16 on the left? Thank you.

04:40PM 17 **MR. COOPER:** Ms. Champoux, on the right, can you pull
04:40PM 18 up Government Exhibit 8I.

04:40PM 19 **BY MR. COOPER:**

04:41PM 20 Q. Before we move on to 8I, Special Agent Burns, just take a
04:41PM 21 look on the left side of your screen. Is there an entry on
04:41PM 22 February 22nd, 2013?

04:41PM 23 A. There is.

04:41PM 24 Q. Okay. And what's it say there?

04:41PM 25 A. Cross file from C2-12-0090.

04:41PM 1 Q. Did you review that report?

04:41PM 2 A. Yes, I have.

04:41PM 3 Q. Did the defendant draft it?

04:41PM 4 A. He did not.

04:41PM 5 Q. Who drafted it?

04:41PM 6 A. Shane Nastoff.

04:41PM 7 Q. Did it have anything to do with the defendant's

04:41PM 8 investigative activity into Ron Serio?

04:41PM 9 A. Not the defendant's investigative activity.

04:41PM 10 Q. Was it Shane Nastoff's investigative activity?

04:41PM 11 A. Yes, it was.

04:41PM 12 Q. Can you cross it off on the left there.

04:41PM 13 Now in 8I, what are we looking at there?

04:41PM 14 A. 8I is the initial debriefing of the confidential source,

04:41PM 15 R.K.

04:41PM 16 Q. Have you reviewed that document?

04:41PM 17 A. Yes, I have.

04:41PM 18 Q. Who drafted that report?

04:41PM 19 A. Joseph Bongiovanni did.

04:41PM 20 Q. What was the date that R.K. was interviewed?

04:42PM 21 A. April 30th, 2013.

04:42PM 22 Q. And what was the date the report was prepared?

04:42PM 23 A. The date prepared is 5/2 of 2013.

04:42PM 24 Q. Who does the defendant list as other people involved in

04:42PM 25 the interview of R.K.?

04:42PM 1 A. Special Agent Shane Nastoff, and Group Supervisor
04:42PM 2 Flickinger.

04:42PM 3 Q. Does Government Exhibit 8I indicate that R.K. had access
04:42PM 4 to leadership of the Ron Serio DTO?

04:42PM 5 A. Yes, it's outlined in there.

04:42PM 6 Q. Does it indicate that R.K. had access to other members
04:42PM 7 and associates of the Serio DTO?

04:42PM 8 A. Yes, it does.

04:42PM 9 Q. Is that reflected on Government Exhibit 8A-6?

04:42PM 10 A. Yes, it is.

04:42PM 11 Q. Okay. Is that the entry for May 2nd, 2013?

04:42PM 12 A. Yes, it is.

04:42PM 13 Q. Okay. Can you cross that one off?

04:42PM 14 A. Yep.

04:42PM 15 **MR. MacKAY:** Judge, can we approach on this, please?

04:42PM 16 **THE COURT:** Sure.

04:43PM 17 (Sidebar discussion on the record.)

04:43PM 18 **MR. MacKAY:** I have to object again, particularly if
04:43PM 19 we're going to continue to go to through the rest of the file
04:43PM 20 as cumulative. Essentially making a closing argument here of
04:43PM 21 rehashing of everything that was said in the beginning.

04:43PM 22 **THE COURT:** No, he's summarizing it, and he's
04:43PM 23 summarizing it in what would be an effective way, but I'm not
04:43PM 24 going to stop him from doing that. That's just good
04:43PM 25 lawyering, I'm not gonna stop good lawyering. But I think

04:43PM 1 it's a summary of stuff that's already in evidence.

04:43PM 2 **MR. MacKAY:** Understood.

04:43PM 3 (Sidebar discussion ended.)

04:43PM 4 **MR. COOPER:** Ms. Champoux, can you pull down 8I on
04:43PM 5 the right, and pull up Government Exhibit 8H.

04:43PM 6 **BY MR. COOPER:**

04:43PM 7 Q. Special Agent Burns, after that May 2nd, 2013, entry, the
04:43PM 8 initial debriefing of R.K., what's the next entry on
04:44PM 9 Government Exhibit 8A-6?

04:44PM 10 A. The June 18th, 2013 surveillance of 82 Sycamore.

04:44PM 11 Q. Okay. And we're looking at 8H on the right side of the
04:44PM 12 screen; do you see that?

04:44PM 13 A. That's correct.

04:44PM 14 Q. Okay. And who drafted that report?

04:44PM 15 A. Special Agent Bongiovanni drafted it.

04:44PM 16 Q. Okay. And who's listed as another officer?

04:44PM 17 A. Special Agent David Leary.

04:44PM 18 Q. Were you present for the testimony of Special Agent Leary
04:44PM 19 regarding his surveillance efforts on June 3rd, 2013 at 82
04:44PM 20 Sycamore Street?

04:44PM 21 A. Yes, I was.

04:44PM 22 Q. Was he the person who was conducting the surveillance
04:44PM 23 that's reported in the report of investigation?

04:44PM 24 A. Yes.

04:44PM 25 Q. Does the report of investigation indicate that the

04:44PM 1 defendant participated in the surveillance?

04:44PM 2 A. It does not.

04:44PM 3 Q. Do you have any professional experience conducting

04:44PM 4 surveillance in criminal investigations?

04:44PM 5 A. Quite a bit.

04:44PM 6 Q. Quite a bit?

04:44PM 7 A. Right. It's a little dated, but I used to do it a lot

04:44PM 8 more in my -- when I worked narcotics predominantly.

04:45PM 9 Q. Is surveillance generally a solo activity, or is that

04:45PM 10 something agents generally do in groups?

04:45PM 11 A. Well, I mean, if I'm going by an address just to grab

04:45PM 12 tags, like, collect license plates, see if somebody's home,

04:45PM 13 things like that, I mean, I'll do -- I would do activities

04:45PM 14 like that by myself.

04:45PM 15 But it I was doing a true surveillance where we want to

04:45PM 16 sit on it, follow vehicles, maybe pick somebody off, then

04:45PM 17 that would be done with a number of agents --

04:45PM 18 Q. Based on your training --

04:45PM 19 A. -- or officers, as well. I'm sorry, acts and officers.

04:45PM 20 Q. That's okay. Based on your training and experience, is

04:45PM 21 surveillance more effective on a narcotics target when it's

04:45PM 22 involving a group of agents and officers?

04:45PM 23 A. Absolutely.

04:45PM 24 Q. Are you aware of the risk associated with doing

04:45PM 25 surveillance, sometimes referred to as getting made?

04:45PM 1 A. Yeah, there's always a risk in surveillance of getting
04:45PM 2 burned.

04:45PM 3 Q. What does it mean to get burned or get made?

04:45PM 4 A. That means the target just figured out that people are
04:46PM 5 surveilling or individuals are surveilling them.

04:46PM 6 Q. Is that something you try to avoid as a law enforcement
04:46PM 7 officer?

04:46PM 8 A. You try, yes. You absolutely try.

04:46PM 9 Q. Is it essentially always a risk when conducting
04:46PM 10 surveillance?

04:46PM 11 A. Absolutely.

04:46PM 12 Q. Can you mitigate the risk of getting burned, as you put
04:46PM 13 it, by using multiple agents to conduct a surveillance?

04:46PM 14 A. Yes, that mitigates it quite a bit, the more vehicles you
04:46PM 15 have on the street.

04:46PM 16 Q. Based on your training and experience, does using
04:46PM 17 multiple agents to get involved in a surveillance assist in
04:46PM 18 avoiding detection by the target?

04:46PM 19 A. Absolutely. There's different techniques you can use.
04:46PM 20 You put people on a paralegal, side streets.

04:46PM 21 Q. Based your training and experience, does the risk of
04:46PM 22 getting made prevent law enforcement from utilizing
04:46PM 23 surveillance as a technique?

04:46PM 24 A. No, I mean, sometimes you get made, and they're gonna be
04:46PM 25 more savvy to it and next time, and maybe you'll change your

04:46PM 1 tactics, but they usually keep -- they'll keep their criminal
04:46PM 2 activity ongoing.

04:46PM 3 Q. Now you said you used to work a lot of narcotics
04:46PM 4 investigations when you were in Memphis, right?

04:46PM 5 A. That's right.

04:46PM 6 Q. Based on your experience conducting narcotics
04:47PM 7 investigations, is surveillance a big part of what you do?

04:47PM 8 A. It's an extremely important part of narcotics
04:47PM 9 investigations.

04:47PM 10 Q. If you were conducting a narcotics investigation, and one
04:47PM 11 of your teammates was out on a solo surveillance, and
04:47PM 12 identified the targets at a warehouse, would that be a
04:47PM 13 situation where you could move the investigation forward
04:47PM 14 rapidly?

04:47PM 15 A. Yes. That happens from time to time, and you get bodies
04:47PM 16 on the streets.

04:47PM 17 Q. Have you worked on investigations before where
04:47PM 18 surveillance led to a break in the case?

04:47PM 19 A. Yes, many times.

04:47PM 20 Q. Is that pretty common?

04:47PM 21 A. In narcotics investigations, absolutely.

04:47PM 22 Q. Are you familiar with a technique in narcotics
04:47PM 23 investigations to set up surveillance on a potential or
04:47PM 24 suspected drug dealer's residence?

04:47PM 25 A. Yes.

04:47PM 1 Q. Is that something that's done?

04:47PM 2 A. Yes, very common.

04:48PM 3 Q. Okay. And have you heard of the term picking off

04:48PM 4 customers before?

04:48PM 5 A. Yeah.

04:48PM 6 Q. What does it mean to pick off customers?

04:48PM 7 A. It means to do a traffic stop. You try to see somebody

04:48PM 8 leaving, you don't know if they purchased narcotics or not.

04:48PM 9 But what you do is create a traffic stop, oftentimes with a

04:48PM 10 marked unit, so it looks as if they were maybe conducting a

04:48PM 11 traffic infraction or something. If do you it far enough

04:48PM 12 away, even if they're carrying narcotics, then likely they'll

04:48PM 13 believe it was just a regular traffic stop, so you really

04:48PM 14 haven't burned yourself.

04:48PM 15 Q. Can you -- if you catch an individual leaving with

04:48PM 16 narcotics, could you charge that individual?

04:48PM 17 A. Oh, absolutely. Flip them.

04:48PM 18 Q. What do you mean by flip them?

04:48PM 19 A. I mean getting their cooperation, because now they have

04:48PM 20 drugs in their hands, and you've got leverage over them.

04:48PM 21 Q. Can that help you work your way up towards the target?

04:48PM 22 A. Yeah. I mean, most narcotics investigations, that's the

04:48PM 23 goal of the investigation is to work your way up.

04:48PM 24 Q. So Government Exhibit 8H, that's Dave Leary's

04:49PM 25 surveillance, right?

04:49PM 1 A. Yes.

04:49PM 2 Q. Can you cross off Dave Leary's surveillance on Government
04:49PM 3 Exhibit 8A-6?

04:49PM 4 Other than Government Exhibit 8H which you just crossed
04:49PM 5 off there, are there any DEA-6 reports contained in
04:49PM 6 C2-13-0026 documenting investigative activity?

04:49PM 7 A. Any more investigative activity, or case status?

04:49PM 8 Q. Any investigative activity that's being substantively
04:49PM 9 documented after that Dave Leary surveillance report.

04:49PM 10 A. After that, there's strictly the case status updates.

04:49PM 11 Q. Okay. And based on your review of the file, is there a
04:49PM 12 difference between a case status update, and a substantive
04:49PM 13 report of investigation like Government Exhibit 8H?

04:49PM 14 A. Yes.

04:49PM 15 **MR. COOPER:** Ms. Champoux, on the right side of the
04:50PM 16 screen, can you take down 8H, and can you bring up 22I in
04:50PM 17 evidence?

04:50PM 18 **BY MR. COOPER:**

04:50PM 19 Q. Do you recognize this?

04:50PM 20 A. Yes, I do.

04:50PM 21 **MR. COOPER:** Ms. Champoux, can we zoom in on this
04:50PM 22 middle email here?

04:50PM 23 **BY MR. COOPER:**

04:50PM 24 Q. Do you see the defendant's email to Scott Deming?

04:50PM 25 A. Yes, I do.

04:50PM 1 Q. Can you read it for the jury?

04:50PM 2 A. Thank you, Scott. We are making strides on the street,
04:50PM 3 so we will report soon.

04:50PM 4 Q. What's the date the defendant sent that email?

04:50PM 5 A. May 23rd, 2013.

04:50PM 6 Q. Okay. Is that about three weeks after the initial
04:50PM 7 debriefing of R.K.?

04:50PM 8 A. Yes.

04:50PM 9 Q. That was in late April, right?

04:50PM 10 A. That's correct.

04:50PM 11 Q. Okay. And is it before Dave Leary's surveillance?

04:50PM 12 A. Yes, it is.

04:50PM 13 Q. Okay. After the initial debriefing of R.K. and before
04:50PM 14 Dave Leary's surveillance, were there any documented DEA-6
04:50PM 15 reports of substantive investigative activity?

04:50PM 16 A. There was not.

04:50PM 17 **MR. COOPER:** Ms. Champoux, can you zoom out of that,
04:51PM 18 and take down 22I. Now, Special Agent Burns -- can we bring
04:51PM 19 up 8A-6 on the left again? Thank you.

04:51PM 20 **BY MR. COOPER:**

04:51PM 21 Q. Special Agent Burns, are you aware of some documentation
04:51PM 22 in the file for C2-13-0026 regarding attempts to obtain funds
04:51PM 23 for a buy?

04:51PM 24 A. Yes, I saw I think two separate documents that appear to
04:51PM 25 be requesting funding for undercover purchases.

04:51PM 1 Q. Okay. Is there any documentation in the file that a buy
04:51PM 2 was ever actually attempted?

04:51PM 3 A. There was no DEA-6 or document indicating that any buys
04:51PM 4 were attempted.

04:51PM 5 Q. Is there any documentation or DEA-6 indicating that the
04:51PM 6 defendant used R.K. to make a controlled call into Ron Serio?

04:51PM 7 A. There was no DEA-6 or any items I saw in there that
04:51PM 8 indicated that there was an attempt.

04:51PM 9 Q. Okay. Is there any DEA-6 indicating that the defendant
04:52PM 10 used R.K., the C.S. in this case, to attempt to make a
04:52PM 11 controlled phone call into Frank Burkhardt?

04:52PM 12 A. There was not.

04:52PM 13 Q. How about T.S.?

04:52PM 14 A. There is not.

04:52PM 15 Q. Any reports in the file documenting the location and
04:52PM 16 identification of marijuana grow locations?

04:52PM 17 A. No.

04:52PM 18 Q. Are there any reports between April 30th, 2013, and
04:52PM 19 May 23rd, 2013, documenting specific acts of investigation
04:52PM 20 that actually took place or happened?

04:52PM 21 A. No, there's not.

04:52PM 22 **MR. COOPER:** Ms. Champoux, on the right side of the
04:52PM 23 screen, can you pull up what's in evidence as Government
04:52PM 24 Exhibit 8G. Okay.

25

04:52PM

1

BY MR. COOPER:

04:52PM

2

Q. What's the date that this report was prepared?

04:52PM

3

A. September 11th, 2013.

04:52PM

4

Q. And in box 10 what's the report subject?

04:52PM

5

A. Box 10. Case status.

04:53PM

6

Q. Okay. And is that case status reflected on the left on

04:53PM

7

that checklist we've got going?

04:53PM

8

A. Yes, it is.

04:53PM

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MR. COOPER: Ms. Champoux, on the right, can you zoom

04:53PM

10

in on paragraph 2? All right.

04:53PM

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BY MR. COOPER:

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Q. We're not going to read the whole thing, but do you see

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13

reference to several surveillances?

04:53PM

14

A. Yes, I do.

04:53PM

15

Q. How many DEA-6 reports documenting surveillance exist in

04:53PM

16

the file for C2-13-0026?

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17

A. Just the one from June 18th.

04:53PM

18

Q. Who did that surveillance?

04:53PM

19

A. That was Special Agent David Leary.

04:53PM

20

Q. Okay. Now did you see some pictures in the electronic

04:53PM

21

file?

04:53PM

22

A. I saw, I believe, three.

04:53PM

23

Q. Okay. And was there a picture that appeared to be a

04:53PM

24

white BMW?

04:53PM

25

A. Yes, it was.

04:53PM 1 Q. Did you believe that to be associated with Tom Serio?

04:53PM 2 A. It appeared to be, it indicated it was on Lebrun.

04:53PM 3 Q. Okay. Any DEA-6 report documenting that activity?

04:53PM 4 A. There was not.

04:53PM 5 Q. Do you see in paragraph 2 the reference to agents

04:54PM 6 utilizing air surveillance with the ECSO chopper?

04:54PM 7 A. Yes, I do.

04:54PM 8 Q. Is there a DEA-6 report of investigation in the file

04:54PM 9 documenting any air surveillance at all used in the

04:54PM 10 investigation of this case?

04:54PM 11 A. There is not.

04:54PM 12 Q. Were you present for the testimony of Kevin Caffery, the

04:54PM 13 air pilot for the Erie County Sheriff's Office?

04:54PM 14 A. Yes, I was.

04:54PM 15 Q. Did he testify that he'd ever met the defendant?

04:54PM 16 A. He never met the defendant.

04:54PM 17 Q. Did he say he conducted surveillance on the defendant's

04:54PM 18 behalf?

04:54PM 19 A. He said he did not conduct surveillance on the

04:54PM 20 defendant's behalf.

04:54PM 21 **MR. COOPER:** Okay. You can zoom out of there,

04:54PM 22 Ms. Champoux. Can we cross off that September 11, 2013 case

04:54PM 23 status report? Thank you.

04:54PM 24 Can you take down 8G and now bring up 8F.

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BY MR. COOPER:

Q. What's the date that this report was prepared?

A. December 31st, 2013.

Q. And in box 10, what's this report about?

A. Another case status.

Q. Okay. So to be clear, this isn't a substantive investigative DEA-6; is that fair?

A. That's fair.

Q. It's a status update?

A. Correct.

Q. Okay. Is this the very next DEA-6 chronologically contained in the file after the September 11th 6 that we just looked at?

A. Yes, it is.

Q. Is this December 31st, 2013 case status report the first time that we see the mention of Remus Nowak mentioned in a case state report, or a 6?

A. Yes, it is the first time.

Q. Is there any explanation in the case status report as to how Nowak was identified as a supposed member of the Serio DTO?

A. There was nothing in the file related to Remus Nowak or how they got there.

Q. Does the report explain it?

A. It does not.

04:55PM 1 Q. Is there any other report in the file that explained how
04:55PM 2 Nowak was identified as a member of the Serio DTO?

04:56PM 3 A. I reviewed the work -- the file from the basement, I
04:56PM 4 reviewed the other file, and I found no -- any kind of
04:56PM 5 information that -- how Remus Nowak came to be.

04:56PM 6 Q. Special Agent Burns, up until this point, we're up to
04:56PM 7 December 31st, 2013. In the reports that you reviewed so
04:56PM 8 far, is the major drug organization that's being investigated
04:56PM 9 still called the Serio DTO?

04:56PM 10 A. Yes, the Ron Serio DTO.

04:56PM 11 Q. Can you see a sentence in that report in paragraph 2
04:56PM 12 regarding Duncan Motor Sales?

04:56PM 13 A. Yes, concerning Remus Nowak. Nowak is an owner of Duncan
04:56PM 14 Motor Sales, Motor Car Sales located at 2030 Delaware Avenue,
04:56PM 15 Buffalo, New York.

04:56PM 16 Q. Can you read the next sentence?

04:56PM 17 A. Agents have initiated in-depth financial analysis of
04:56PM 18 money lawn -- or, of financial records of Duncan Motor Car
04:57PM 19 Sales in efforts to exposed money laundering and structuring
04:57PM 20 practices.

04:57PM 21 Q. Okay. Was there anything in the file, electronically, in
04:57PM 22 the paper file, or in the working file, that indicated that
04:57PM 23 agents had initiated indepth financial analysis into Duncan
04:57PM 24 Motor Sales?

04:57PM 25 A. None at all.

04:57PM 1 Q. Can you cross off that December 31st, 2013, case status?

04:57PM 2 **MR. COOPER:** And on the right, Ms. Champoux, can we
04:57PM 3 pull up Exhibit 8E.

04:57PM 4 **BY MR. COOPER:**

04:57PM 5 Q. Special Agent Burns, after that December 31st report we
04:57PM 6 just looked at, is the next report in the file
04:57PM 7 chronologically April 7th of 2014?

04:57PM 8 A. Yes, it is.

04:57PM 9 Q. Is this a substantive investigative DEA-6?

04:57PM 10 A. That's, again, a case status, not a substantive
04:57PM 11 investigative DEA-6.

04:57PM 12 Q. Okay. Were there any DEA-6s that are in the file but not
04:57PM 13 listed on the checklist here that you found when you looked?

04:57PM 14 A. Not that I saw.

04:57PM 15 Q. Okay. So is it fair to say it's been about four months
04:58PM 16 since the last case status?

04:58PM 17 A. That's fair.

04:58PM 18 Q. Or three months and change?

04:58PM 19 A. Yeah, three and a half.

04:58PM 20 Q. It's the math again.

04:58PM 21 **MR. COOPER:** In paragraph 2, Ms. Champoux, can you
04:58PM 22 zoom in on paragraph 2?

04:58PM 23 **THE WITNESS:** Thank you.

04:58PM 24 **BY MR. COOPER:**

04:58PM 25 Q. Can read that?

04:58PM 1 A. Yes. Agents are in the processed of securing a FLIR
04:58PM 2 warrant for the aerial surveillance of 42 Norwalk Avenue,
04:58PM 3 Buffalo, New York. A possible grow operation is believed to
04:58PM 4 be in operation at the address in reference to Remus Nowak.

04:58PM 5 Q. Any mention of Serio at all there?

04:58PM 6 A. No mention of Serio.

04:58PM 7 **MR. COOPER:** Okay. And can you zoom out of that,
04:58PM 8 Ms. Champoux.

04:58PM 9 **BY MR. COOPER:**

04:58PM 10 Q. Is paragraph 3 essentially repeating information from the
04:58PM 11 December 31st case status report?

04:58PM 12 A. Yes. It's not verbatim, but it's sum and substance the
04:58PM 13 same.

04:58PM 14 Q. Okay. So is it fair to say the only new information
04:58PM 15 there is information about Remus Nowak?

04:59PM 16 A. Correct. And the FLIR warrant we just mentioned.

04:59PM 17 Q. Are there any reports or any information contained in the
04:59PM 18 file that explains the source of the statement that Remus
04:59PM 19 Nowak is a major money laundering source for the Serio DTO?

04:59PM 20 A. No, none at all.

04:59PM 21 **THE COURT:** Mr. Cooper, it's 5:00. We're obviously
04:59PM 22 not going to finish today. How much more do you have?

04:59PM 23 **MR. COOPER:** Honestly, like 10-ish minutes, maybe
04:59PM 24 less.

04:59PM 25 **THE COURT:** Okay. So let's finish the direct.

2 BY MR. COOPER:

6 A. It says agents have identified Remus Nowak, a/k/a Remus.
7 And Nowak is believe to be a major marijuana distributor and
8 money laundering source for the Serio DTO. So we're still
9 talking about the Serio DTO.

12 Special Agent Burns, can we cross off the April 7,
13 2014 report?

16 BY MR. COOPER:

18 | A. Yes, it is.

20 A. No. Again, it's a case status, not a substantive
21 investigative 6.

24	A. None.
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25 Q. Nothing that we just forgot to put on the checklist?

05:00PM 1 A. No, none that I observed.

05:00PM 2 Q. Okay.

05:00PM 3 A. In my review.

05:00PM 4 **MR. COOPER:** Can we zoom in on paragraph 2,

05:00PM 5 Ms. Champoux. Can you move that to the top, or the bottom?

05:00PM 6 Whatever. There you go.

05:00PM 7 **BY MR. COOPER:**

05:00PM 8 Q. Can you read that for the jury?

05:01PM 9 A. Agents continue to work with Amherst PD in an effort to
05:01PM 10 infiltrate the Remus Nowak DTO.

05:01PM 11 Q. We renamed the DTO?

05:01PM 12 A. It states the Remus Nowak DTO. That's the first time
05:01PM 13 I've seen it in the file.

05:01PM 14 Q. It's not the Serio DTO anymore?

05:01PM 15 A. There's not a -- there's a reference to Remus Nowak DTO.

05:01PM 16 **MR. COOPER:** Okay. Can you zoom out of that,

05:01PM 17 Ms. Champoux, and zoom in on paragraph 3.

05:01PM 18 **BY MR. COOPER:**

05:01PM 19 Q. Is paragraph 3 essentially repeating information from the
05:01PM 20 prior three case status reports?

05:01PM 21 A. Yes, very similar.

05:01PM 22 Q. Okay. There, it's still the Serio DTO, right?

05:01PM 23 A. Yes, Nowak's part of it.

05:01PM 24 **MR. COOPER:** Can you zoom out of that, please? Just
05:01PM 25 leave it up for a second. Thank you.

2 Q. In paragraph 2, do you see the defendant report that he's
3 working now with the Amherst Police Department in an effort
4 to infiltrate the Nowak DTO?

6 | Q. Were you present for the testimony of JoAnn DiNoto?

8 Q. Did she offer to help the defendant investigate the Serio
9 DTO?

11 Q. Was there any indication that that offer was taken up on?

13 Q. Okay. Can you cross off that July 7, 2014 status report?

16 BY MR. COOPER:

18 | A. Yes, it is.

19 | Q. Is this one a substantive 6 of investigation?

20 A. No, it's a case status again.

21 | Q. Okay. And how is the status going at this point?

22 A. Well, the investigation is pending closure. The
23 confidential informant associated with the case file is no
24 longer viable, and cannot provide credible information in
25 furtherance of this investigation. The agent will not -- it

1 says not prepare this case for closure, but I think that's a
2 typo, will now prepare this case for closure.

3 And then line 3 is the investigation is pending closure.

4 Q. And what's the date this report was prepared?

5 A. November 4, 2014.

6 Q. Are you familiar with when the defendant actually closed
7 out R.K. as a source?

8 A. It was quite a while previously.

9 Q. Does September 9, 2013 sound correct?

10 A. Yes, that sounds accurate.

11 Q. So we're about 14 months past that?

12 A. Correct.

13 Q. Were you present for the testimony of Ron Serio when he
14 said that he would have sold any amount of marijuana to R.K.
15 in the presence of Frank Burkhardt?

16 A. Yes, I was.

17 Q. Can you cross off that November 4, 2014 case status
18 report.

19 **MR. COOPER:** And, Ms. Champoux, on the right can you
20 pull up 8B as in boy.

21 **BY MR. COOPER:**

22 Q. What's the date this report's prepared?

23 A. January 28th, 2015.

24 Q. Can you read paragraph 3?

25 A. This case is now closed.

05:04PM 1 Q. Who's indexed?

05:04PM 2 A. Wayne Anderson and Damien Abbate.

05:04PM 3 Q. Any mention of Ron Serio at all in that report?

05:04PM 4 A. There is no mention of Ron Serio.

05:04PM 5 Q. Okay. And that's from January 28th of 2015?

05:04PM 6 A. That is correct.

05:04PM 7 Q. Can you cross off that January 28, 2015? Okay.

05:04PM 8 Does that cover all the DEA-6s that were contained in
05:04PM 9 C2-13-0026?

05:04PM 10 A. That I observed in there, in my review.

05:04PM 11 Q. Okay. Other than the initial debriefing of R.K., and the
05:04PM 12 surveillance at 82 Sycamore, are there any 6s documenting
05:04PM 13 substantive investigative activity?

05:04PM 14 A. There was not.

05:04PM 15 **MR. COOPER:** Ms. Champoux, can you pull those two
05:04PM 16 down for us. Thank you. And then on the left, can you bring
05:05PM 17 up 8B as in boy. And on the right, can you pull up 22Q.

05:05PM 18 **BY MR. COOPER:**

05:05PM 19 Q. How many months after the defendant closed his file in
05:05PM 20 C2-13-0026 did he send an email to Scott Deming telling him
05:05PM 21 that they were still working the case? How many months
05:05PM 22 later?

05:05PM 23 A. Six months -- or, seven months, I'm sorry. No, six is
05:05PM 24 right.

05:05PM 25 Q. Take your time.

05:05PM 1 A. It's late.

05:05PM 2 Q. Okay. Special Agent Burns, during the course of your
05:05PM 3 career, have you received correspondence from other law
05:05PM 4 enforcement agencies asking you about a target that you've
05:05PM 5 closed an investigation on?

05:05PM 6 A. Occasionally it's happened.

05:05PM 7 Q. Okay. And what's your response been in those situations?

05:05PM 8 A. I was enthusiastically supported whoever wanted to look
05:05PM 9 at one of my old targets. It's usually I closed the
05:06PM 10 investigation because I wasn't able to develop enough
05:06PM 11 information, so I would -- my practice is to extend whatever
05:06PM 12 help I can, pull up old reports, provide any background, and
05:06PM 13 in some cases maybe rejoin their investigation if it makes
05:06PM 14 sense.

05:06PM 15 Q. Has it been your experience that that's common in the law
05:06PM 16 enforcement community?

05:06PM 17 A. Very common.

05:06PM 18 **MR. COOPER:** Judge, may I just have one moment.

05:06PM 19 **THE COURT:** Sure.

05:06PM 20 **BY MR. COOPER:**

05:06PM 21 Q. Special Agent Burns, have you heard the name Peter
05:06PM 22 Militello come up during the course of the trial?

05:06PM 23 A. I have.

05:06PM 24 Q. Is there any reference in the file materials that you
05:06PM 25 reviewed that Peter Militello was a source in the

1 investigation into Ron Serio?

2 A. I saw no reference in the files to that.

3 **MR. COOPER:** Okay. I have no further direct, Judge.

4 **THE COURT:** Okay.

5 (Excerpt concluded at 5:07 p.m.)

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10 **CERTIFICATE OF REPORTER**

11
12 In accordance with 28, U.S.C., 753(b), I
13 certify that these original notes are a true and correct
14 record of proceedings in the United States District Court for
15 the Western District of New York on March 21, 2024.

16
17
18 s/ Ann M. Sawyer
19 Ann M. Sawyer, FCRR, RPR, CRR
20 Official Court Reporter
21 U.S.D.C., W.D.N.Y.
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TRANSCRIPT INDEX

EXCERPT OF TESTIMONY OF BRIAN A. BURNS

MARCH 21, 2024

W I T N E S S

P A G E

B R I A N A . B U R N S

2

DIRECT EXAMINATION BY MR. COOPER:

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E X H I B I T S

P A G E

GOV Exhibit 310AT

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GOV Exhibit 367

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